

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA
10

11 Robin M. Lee,
12 Plaintiff,

13 v.

14 Alicia's Motel, a/k/a Dora & Sons,
15 Defendant.
16

Case No. 2:13-cv-1777-JAD-NJK

**Order Adopting the U.S. Magistrate
Judge's Report and
Recommendation and Dismissing
Case for Want of Jurisdiction
[Doc. 2]**

17 Plaintiff Robin S. Lee, a Nevada resident, sues Alicia's Motel, based on an alleged
18 October 31, 2011, theft of his belongings from a Las Vegas, Nevada motel by an alleged
19 escaped fugitive, Arlene Griffin. *See* Doc. 1-1 at 2. In his *in forma pauperis* application,
20 Lee checked a box signifying that his complaint was brought under 42 U.S.C. § 1983. Doc.
21 1 at 1. However, the complaint itself did not identify any jurisdictional basis for maintaining
22 this suit in federal court. *See* Doc. 1-1.

23 Lee's *in forma pauperis* application was referred to Magistrate Judge Koppe, who
24 recommended that the application be granted and the case dismissed because it contains no
25 claim that may be maintained in this court of limited jurisdiction. *See* Doc. 2 at 3 & n.2.

26 Lee filed objections to Judge Koppe's Report and Recommendation. Docs. 3, 4.
27 Lee's second objection, Doc. 4, was filed 30 days after Judge Koppe issued her Report and
28

1 Recommendation, outside of the 14-day window that the rules of this court allow for filing
2 objections.¹ Lee's second objection was thus untimely and will not be considered. Lee's
3 first objection, timely filed 10 days after the Report and Recommendation, asserted that, in
4 contravention of his *in forma pauperis* application, he did not bring his cause of action under
5 42 U.S.C. § 1983. Doc. 3 at 1. He also asserts that all defendants are Nevada residents.
6 *Id.* at 2. Lee goes on to object to Judge Koppe's assessment of the meritlessness of his claim.

7 Typically, when a district court is presented with objections to a Magistrate Judge's
8 report and recommendations, the court must "make a de novo determination of those portions
9 of the report or specified proposed findings to which objection is made."² In this case, Lee's
10 objections effectively argue him out of federal court.³ Having disavowed 42 U.S.C. § 1983
11 as a basis for his complaint, invoked no other federal statute, Lee cannot avail himself of
12 federal question jurisdiction;⁴ and since he claims that both he and the defendants are Nevada
13 residents, he cannot avail himself of the Court's diversity jurisdiction.⁵ Rule 12(h)(3) states
14 that "If the court determines at any time that it lacks subject-matter jurisdiction, the court
15 must dismiss the action."⁶ Lee's other objections all go to the merits of his claim, do nothing
16 to remedy the fatal jurisdictional defects of his case, and are overruled. Judge Koppe's
17 Report and Recommendation is adopted in its entirety.

18 Conclusion

19 **IT IS THEREFORE ORDERED** that the U.S. Magistrate Judge's Findings and
20 Recommendation [Doc. 2] are hereby adopted in their entirety.

21 _____
22 ¹ See 28 U.S.C. 636(b)(2).

23 ² 28 U.S.C. § 636(b)(1); *United States v. Berhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988); *Schmidt v.*
24 *Johnstone*, 263 F. Supp. 2d 1219, 1125 (D. Ariz. 2003) (quoting *United States v. Reyna-Tapia*, 328 F.3d
1114, 1122 (9th Cir. 2003) (en banc)) (finding that de novo review is required as to findings of fact and
conclusions of law where parties object).

25 ³ *Cf. Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

26 ⁴ 28 U.S.C. § 1331.


27 ⁵ 28 U.S.C. § 1332.

28 ⁶ Fed. R. Civ. Proc. 12(h)(3).

1 **IT IS FURTHER ORDERED** that Lee's Objections to the Report and
2 Recommendation [Docs. 3, 4] are **OVERRULED**.

3 **IT IS FURTHER ORDERED** that Lee's Application for leave to proceed *in forma*
4 *pauperis* is **GRANTED**, however, this case is **DISMISSED WITH PREJUDICE**. The
5 Clerk of Court shall enter judgment accordingly.

6 DATED: April 30, 2014.

7
8 
9 JENNIFER A. DORSEY
10 UNITED STATES DISTRICT JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28